

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNIVERSITY OF WASHINGTON, d/b/a
UNIVERSITY OF WASHINGTON MEDICAL
CENTER,

Plaintiff,

v.

KATHLEEN SEBELIUS, in her official capacity
as Secretary, United States Department of Health
and Human Services,

Defendant.

CASE NO. C11-625RSM

ORDER ON MOTION FOR
RECONSIDERATION

Plaintiff University of Washington Medical Center (“UW Medical Center”) filed this action for administrative review of a final decision by the Secretary of the United States Department of Health and Human Services (“Secretary”) regarding Medicare reimbursement. Specifically, plaintiff challenges a February 7, 2011, decision by the Medicare Provider Reimbursement Board (“PRRB”) that denied jurisdiction over a Medicare cost report appeal for the fiscal year ending June 30, 1999 (“FYE 6/30/99”). Dkt. # 1. The appeal, Case No. 02-1021, concerned direct and indirect medical education payments (“DGME” and “IME” respectively) received by UW Medical Center from Medicare for graduate education medical activities. *Id.* Such payments are based, in part, on the number of full time equivalent (“FTE”) residents and graduate fellows participating in an approved medical education program. *Id.* The PRRB serves as the first level of appeal for hospitals challenging their annual Medicare cost reports, following finalization by an agent of the Secretary referred to as the Fiscal Intermediary (“Intermediary.”). *Id.*

1 This matter is before the Court for consideration of Plaintiff's motion for reconsideration of the
2 Court's December 22, 2011 Order denying Plaintiff's motion to supplement the record. Dkt. ## 31, 32.
3 Plaintiff sought to have the record supplemented with two documents: a letter dated August 31, 2010 in
4 which the Intermediary conceded jurisdiction over IME Research FTE's for FYE 6/30/97 and FYE
5 6/30/98, and portions of a February 3, 2011, jurisdictional response which Plaintiff argued is "related to
6 UWMC's IME resident FTEs for FYE 6/30/99." Motion to Supplement, Dkt. # 15, p. 10. The Court
7 denied the motion, noting that neither document was filed in Case No. 02-1021 or bears that number on
8 the face sheet, and was therefore not made part of the record or considered by the PRRB in Case No. 02-
9 1021. The Court specifically noted that Plaintiff had not demonstrated that supplementation of the
10 record was justified by any of the four factors identified by the Ninth Circuit Court of Appeals: (1) if
11 admission is necessary to determine whether the agency has considered all relevant factors and has
12 explained its decision; (2) if the agency has relied on documents not in the record; (3) when
13 supplementing the record is necessary to explain technical terms or complex subject matter; or (4) where
14 there has been a strong showing of bad faith or improper behavior on the part of agency decision
15 makers. *Lands Council v. Powell*, 395 F. 3d 1019, 1030 (9th Cir. 2005) (internal quotations omitted);
16 *Animal Defense Counsel v. Hodel*, 840 F. 2d 1432, 1436 (9th Cir. 1988).

17 In moving to supplement the record, Plaintiff argued that these documents go to the issue of
18 whether the agency considered all relevant factors in reaching its decision. Plaintiff takes issue with the
19 Court's finding that it "fails to demonstrate that the PRRB had the documents at issue before it when it
20 made the challenged decision. The Court cannot make a finding that these documents are necessary [for
21 it] to determine whether the agency has considered all relevant factors, when the documents at issue
22 were not actually put before the agency in this case." Plaintiff has provided, with the motion, a delivery
23 receipt for the February 3, 2011 letter demonstrating that it was received by the Board Advisor for
24 UWMC's IME Research group appeal on February 4, 2011, three days before the Board reached its
25 decision in the 02-1021 individual appeal. Declaration of Kelly Thomas, Dkt. # 33. Both the
26 declaration and the receipt demonstrate that the letter was submitted in the group appeal, Case No. 05-
27 1478G.

1 The motion for reconsideration thus simply renews arguments made in the original motion: that
2 documents submitted in a different appeal (the group appeal) should have been considered in the related
3 individual appeal. The Court rejected this argument in the Order and declines to reconsider it now.

4 The motion for reconsideration (Dkt. # 32) is accordingly DENIED.

5 DATED this 23 day of July 2012.

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8 RICARDO S. MARTINEZ
9 UNITED STATES DISTRICT JUDGE
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